

January 21, 2022

TITLE 2. STATE ALLOCATION BOARD

NOTICE OF PROPOSED REGULATORY ACTION

THE STATE ALLOCATION BOARD PROPOSES TO AMEND
REGULATION SECTION 1859.106.1,
TITLE 2, CALIFORNIA CODE OF REGULATIONS,
RELATING TO LEROY F. GREENE SCHOOL FACILITIES ACT OF 1998

REGULATION SECTION PROPOSED FOR AMENDMENTS:

- 1859.106.1

NOTICE IS HEREBY GIVEN that the State Allocation Board (SAB) proposes to amend the above-referenced regulation section, contained in Title 2, California Code of Regulations (CCR). A public hearing is not scheduled. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the Office of Public School Construction (OPSC) no later than 15 days prior to the close of the written comment period. Following the public hearing, if one is requested, or following the written comment period if no public hearing is requested, OPSC, at its own motion or at the instance of any interested person, may adopt the proposals substantially as set forth above without further notice.

AUTHORITY AND REFERENCE CITATIONS

The SAB is proposing to amend the above-referenced regulation section under the authority provided by Sections 17070.35 and 17076.10 of the Education Code. The proposal interprets and make specific reference Sections 17070.35, 17076.10(c), 17076.10(c)(1), 17076.10(2) and 17078.52 of the Education Code.

INFORMATIVE DIGEST/POLICY OVERVIEW STATEMENT

The Leroy F. Greene School Facilities Act of 1998 established, through Senate Bill 50, Chapter 407, Statutes of 1998, the School Facility Program (SFP). The SFP provides a per-pupil grant amount to qualifying school districts for purposes of constructing school facilities and modernizing existing school facilities. The SAB adopted regulations to implement the Leroy F. Greene School Facilities Act of 1998, which were approved by the Office of Administrative Law and filed with the Secretary of State on October 8, 1999.

At its October 27, 2021 meeting, the SAB adopted proposed regulatory amendments that allow school districts, county offices of education and charter schools to repay State funds over a 20-year period as a result of an audit finding. This is in alignment with Assembly Bill 130, Chapter 44, Statutes of 2021 [Education Finance: Education Omnibus Budget Trailer Bill]. The provision in the statute extends the maximum timeline for repayment plans from five years to 20 years.

Bond Funds Impacted

- Class Size Reduction Kindergarten-University Public Education Facilities Bond Act of 1998 (Proposition 1A)
- Kindergarten-University Public Education Facilities Bond Act of 2002 (Proposition 47)
- Kindergarten-University Public Education Facilities Bond Act of 2004 (Proposition 55)
- Kindergarten-University Public Education Facilities Bond Act of 2006 (Proposition 1D)
- Kindergarten through Community College Public Education Facilities Bond Act of 2016 (Proposition 51)

Attached to this Notice is the specific regulatory language of the proposed regulatory action, along with the proposed regulatory amendments. The proposed regulation can also be reviewed on OPSC's website at: <https://www.dgs.ca.gov/OPSC/Resources/Page-Content/Office-of-Public-School-Construction-Resources-List-Folder/Laws-and-Regulations>. Copies of the proposed regulatory amendments will be mailed to any person requesting this information by using OPSC's contact information set forth below in this Notice. The proposed regulation amends the SFP Regulations under the California Code of Regulations, Title 2, Chapter 3, Subchapter 4, Group 1, State Allocation Board, Subgroup 5.5, Regulations relating to the Leroy F. Greene School Facilities Act of 1998.

Background and Problem Being Resolved

SFP Regulation Section 1859.106.1 was in effect in 1998 and stipulated that school districts were required to pay any funds owed the State within 60 days. It was then amended to allow school districts, county offices of education and charter schools that would be placed in severe financial hardship the ability to repay funds owed over a five-year period to help alleviate the financial burden if certain criteria were met.

Without the proposed amendments, statute and regulation limited the flexibility for school districts when there are moneys due back to the State as a result of an audit finding. Amounts owed by a school district, county office of education or charter school could still create a severe financial hardship with the current five-year repayment plan. The statutory changes resolve this issue by increasing the maximum timeline for repayment plans from five years to 20 years.

OPSC performed a search on whether the proposed regulatory amendments were consistent and compatible with existing State laws and regulations. After performing the search, OPSC, on behalf of the SAB, has determined that the proposed regulatory amendments are consistent and compatible with existing State laws and regulations. Proceeding with the proposed regulatory amendments aligns with the statute and helps school districts, county offices of education and charter schools better manage the repayment of moneys owed the State. It also alleviates the risk of being placed on the current California Department of Education's (CDE) List of Negative and Qualified Certifications of School Districts and County Offices of Education as a direct result of repaying monies due to the State.

Anticipated Benefits of the Proposed Regulations

The proposed amendments promote transparency and consistency. This benefits school districts, county offices of education, and charter schools by providing the maximum timeline for repayment plans from five years to 20 years. The State of California benefits because the State's investment will be maintained, albeit over a longer period of time, but nonetheless, the

funds will be repaid. The proposed amendments do not have a direct impact on the State's economy or job creation because the State funds owed will be repaid over a period of time.

The proposed amendments are therefore determined to be consistent and compatible with existing State laws and regulations. Proceeding with the implementation of the proposed amendments align with the statute and helps school districts, county offices of education and charter schools better manage the repayment of moneys owed the State. It also alleviates the risk of being placed on the current CDE List of Negative and Qualified Certifications of School Districts and County Offices of Education as a direct result of repaying monies due to the State.

Summary of the Proposed Regulatory Amendments

Existing Regulation Section 1859.106.1 implements an alternative action upon a school district's failure to repay SFP funds due to the State within 60 days. The alternative action is the school district requesting a repayment schedule of up to five years upon showing that a lump sum repayment would cause the school district severe financial hardship. The proposed regulatory amendments provide the maximum timeline for repayment plans from five years to 20 years.

Statutory Authority and Implementation

Education Code Section 17070.35. (a) In addition to all other powers and duties as are granted to the board by this chapter, other statutes, or the California Constitution, the board shall do all of the following: (1) Adopt rules and regulations, pursuant to the rulemaking provisions of the Administrative Procedure Act, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, for the administration of this chapter.

Government Code Section 15503. Whenever the board is required to make allocations or apportionments under this part, it shall prescribe rules and regulations for the administration of, and not inconsistent with, the act making the appropriation of funds to be allocated or apportioned. The board shall require the procedure, forms, and the submission of any information it may deem necessary or appropriate. Unless otherwise provided in the appropriation act, the board may require that applications for allocations or apportionments be submitted to it for approval.

Determination of Inconsistency or Incompatibility with Existing State Regulations

SFP Regulation Section 1859.106.1 currently allows for school districts to request a repayment for up to five years. The statute and regulation limited the flexibility for school districts when there are moneys due back to the State as a result of an audit finding. The amounts owed by a school district, county office of education or charter school could still create a severe financial hardship with the current five-year repayment plan. The statutory changes resolve this issue by increasing the maximum repayment timeline from five years to 20 years.

After conducting a review, the SAB has concluded that these are the only regulations on this subject area, and therefore, the proposed amendments are neither inconsistent nor incompatible with existing State laws and regulations. The proposed regulatory amendments are within the SAB's authority to enact regulations for the SFP under Education Code Section 17070.35 and Government Code Section 15503.

IMPACT ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The Executive Officer of the SAB has determined that the proposed regulatory amendments do not impose a mandate or a mandate requiring reimbursement by the State pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code. It will not require local agencies, school districts, or charter schools to incur additional costs in order to comply with the proposed regulatory amendments.

DISCLOSURES REGARDING THE PROPOSED REGULATORY ACTION

The Executive Officer of the SAB has made the following initial determinations relative to the required statutory categories:

- The SAB has made an initial determination that there will be no significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.
- The SAB is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- There will be no non-discretionary costs or savings to local agencies.
- The proposed regulatory amendments create no costs to any local agency, school district, or charter school requiring reimbursement pursuant to Section 17500 et seq., or beyond those required by law, except for the required district contribution toward each project as stipulated in statute.
- There will be no costs or savings in federal funding to the State.
- The proposed regulatory amendments create no costs or savings to any State agency beyond those required by law.
- The SAB has made an initial determination that there will be no impact on housing costs.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS

Impact to Businesses and Jobs in California

The proposed amendments promote transparency and consistency. This benefits school districts, county offices of education, and charter schools by providing the maximum timeline for repayment plans from five years to 20 years. The State of California benefits because the State's investment will be maintained, albeit over a longer period of time, but nonetheless, the funds will be repaid. The proposed amendments do not have a direct impact on the State's economy or job creation because the State funds owed will be repaid over a period of time.

The proposed amendments are therefore determined to be consistent and compatible with existing State laws and regulations. Proceeding with the implementation of the proposed amendments align with the statute and helps school districts, county offices of education and charter schools better manage the repayment of moneys owed the State. It also alleviates the risk of being placed on the current CDE List of Negative and Qualified Certifications of School Districts and County Offices of Education as a direct result of repaying monies due to the State.

Although the proposed amendments do not have a direct impact on the State's economy, creation of jobs, creation of new businesses, or expansion of businesses, it will not eliminate jobs or eliminate existing businesses within California.

Benefits to Public Health and Welfare, Worker's Safety, and the State's Environment

- The proposed amendments promote transparency and consistency. This benefits school districts, county offices of education, and charter schools by providing the maximum timeline for repayment plans from five years to 20 years. The State of California benefits because the State's investment will be maintained, albeit over a longer period of time, but nonetheless, the funds will be repaid. The proposed amendments do not have a direct impact on the State's economy or job creation because the State funds owed will be repaid over a period of time.
- There are continued benefits to the health and welfare of California residents and worker safety. School districts, charter schools, and local educational agencies utilize construction and trades employees to work on school construction projects and although the proposed regulation amendments do not directly impact worker's safety, existing law provides for the availability of a skilled labor force and encourages improved health and safety of construction and trades employees through proper apprenticeship and training. Further, public health and safety is enhanced because a properly paid and trained workforce will build school construction projects that are higher quality, structurally code-compliant and safer for use by pupils, staff, and other occupants on the site.
- There is no impact to the State's environment from the proposed regulatory amendments.

The SAB finds the proposed regulations fully consistent with the stated purposes and benefits.

EFFECT ON SMALL BUSINESSES

It has been determined that the proposed regulation amendments will not have a negative impact on small businesses in the ways identified in subsections (a)(1)–(4) of Section 4, Title 1, CCR. Although the proposed regulation amendments only apply to school districts, county offices of education, charter schools, and local education agencies for purposes of funding school facility projects, the proposed regulatory amendments do not have a direct impact on the creation of new [small] businesses, or expansion of [small] businesses and it will not eliminate jobs or eliminate existing [small] businesses within California. Further, the nature of the proposed regulation amendments is to extend the maximum statutory timeline for repayment plans from five years to 20 years in order to help school districts better manage the repayment of moneys owed the State and also alleviate the risk of being placed on the current CDE List of Negative and Qualified Certifications of School Districts and County Offices of Education as a direct result of repaying monies due to the State.

SUBMISSION OF COMMENTS, DOCUMENTS AND ADDITIONAL INFORMATION

Any interested person may present statements, arguments or contentions, in writing, submitted via U.S. mail, e-mail or fax, relevant to the proposed regulatory action. Written comments submitted via U.S. mail, e-mail or fax must be received at OPSC no later than March 7, 2022 end of day. The express terms of the proposed regulations as well as the Initial Statement of Reasons are available to the public.

Written comments, submitted via U.S. mail, e-mail or fax, regarding the proposed regulatory action, requests for a copy of the proposed regulatory action or the Initial Statement of Reasons, and questions concerning the substance of the proposed regulatory action should be addressed to:

Lisa Jones, Regulations Coordinator

Mailing Address: Office of Public School Construction
707 Third Street, 6th Floor
West Sacramento, CA 95605

E-mail Address: lisa.jones@dgs.ca.gov

Fax No.: (916) 375-6721

AGENCY CONTACT PERSONS

General or substantive questions regarding this Notice of Proposed Regulatory Action may be directed to Ms. Lisa Jones at (279) 946-8459. If Ms. Jones is unavailable, these questions may be directed to the backup contact person, Mr. Michael Watanabe, Chief of Administrative Services, at (279) 946-8463.

ADOPTION OF REGULATIONS

Please note that, following the public comment period, the SAB may adopt the regulation substantially as proposed in this notice or with modifications, which are sufficiently related to the originally proposed text and notice of proposed regulatory activity. If modifications are made, the modified text with the changes clearly indicated will be made available to the public for at least 15 days prior to the date on which the SAB adopts the regulations.

The modified regulation(s) will be made available and provided to: all persons who testified at and who submitted written comments at the public hearing, all persons who submitted written comments during the public comment period, and all persons who requested notification from the agency of the availability of such changes. Requests for copies of any modified regulations should be addressed to the agency's regulation coordinator identified above. The SAB will accept written comments on the modified regulations during the 15-day period.

SUBSTANTIAL CHANGES WILL REQUIRE A NEW NOTICE

If, after receiving comments, the SAB intends to adopt the regulation with modifications not sufficiently related to the original text, the modified text will not be adopted without complying anew with the notice requirements of the Administrative Procedure Act.

RULEMAKING FILE

Pursuant to Government Code Section 11347.3, the SAB is maintaining a rulemaking file for the proposed regulatory action. The file currently contains:

1. A copy of the text of the regulations for which the adoption is proposed in ~~strikeout~~/underline.
2. A copy of this Notice.
3. A copy of the Initial Statement of Reasons for the proposed adoption.
4. The factual information upon which the SAB is relying in proposing the adoption.

As data and other factual information, studies, reports or written comments are received they will be added to the rulemaking file. The file is available for public inspection at OPSC during normal working hours. Items 1 through 3 are also available on OPSC's Internet Web site at: <https://www.dgs.ca.gov/OPSC/Resources/Page-Content/Office-of-Public-School-Construction-Resources-List-Folder/Laws-and-Regulations> then scroll down to School Facility Program, Pending Regulatory Changes, and look under Charter School Facilities Program for the above-noted bulleted documents.

ALTERNATIVES

In accordance with Government Code Section 11346.5(a)(13), the SAB must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. The alternative to these proposed amendments would be to take no action, which would leave the SAB in violation of the statute as well as the Administrative Procedure Act.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, the Final Statement of Reasons will be available and copies may be requested from the agency's regulation coordinator named in this notice or may be accessed on the website listed above.